

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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FILE:

B-214093

DATE: May 25, 1984**MATTER OF:**

U.S. Jet Aviation

DIGEST:

1. Allegation that solicitation requirement that contractor hold Federal Aviation Administration repair station certificate is unnecessary is untimely, since protest based on alleged solicitation impropriety must be filed before bid opening.
2. Bid may not be rejected as nonresponsive because bidder did not have Federal Aviation Administration repair station certificate as required by solicitation, since requirement relates to bidder's responsibility and bidder should be given reasonable opportunity after bid opening to furnish evidence of required certification.

U.S. Jet Aviation (U.S. Jet) protests the award of a contract to Atlantic Aviation Corporation (Atlantic) under invitation for bids (IFB) No. DTFA01-83-B-31175 issued by the Federal Aviation Administration (FAA) for the maintenance and repair of FAA aircraft located at Washington National Airport on an as ordered basis. The FAA found U.S. Jet to be nonresponsive because U.S. Jet did not have a current FAA repair station certificate. U.S. Jet contends that the requirement is unnecessary and that U.S. Jet met the qualifications for the work actually to be performed.

We dismiss the protest in part and deny it in part.

Our Bid Protest Procedures, 4 C.F.R. § 21.2(b)(1) (1983), require that protests based on solicitation improprieties must be filed before bid opening. Article I.C of the IFB clearly stated that "the contractor must hold a current repair station certificate issued in accordance with the Federal Aviation Administration (FAA) Federal Aviation Regulations (FAR) Part 145." Bid opening date was October 4, 1983, and U.S. Jet's protest was not filed in our Office until January 9, 1984. We therefore will not

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consider the merits of this issue. Gas Turbine Corporation, B-210411, May 25, 1983, 83-2 CPD 566.


Moreover, U.S. Jet's allegation that it orally protested to the contracting officer prior to the bid opening date does not change our conclusion. If a protest is initially filed with the contracting agency, we will consider a subsequent protest to our Office only if it is filed here within 10 working days after the protester receives actual or constructive knowledge of initial action by the contracting agency which is adverse to the protest to that agency. 4 C.F.R. § 21.2(a) (1983). The fact that bid opening occurs is constructive notice that the contracting agency rejects the protest. Bernard Franklin Company, B-207126, May 3, 1982, 82-1 CPD 414. Since the instant protest was filed more than 10 working days after bid opening, it is untimely even if we assume that U.S. Jet, in fact, did lodge an oral protest with the FAA prior to bid opening.

Regarding FAA's action in finding U.S. Jet's bid nonresponsive, we find that the determination was incorrect. The IFB requirement that the contractor hold a current repair station certificate relates to a bidder's responsibility, that is, a bidder's performance capability, rather than bid responsiveness, that is, a bidder's promise to perform, and the bidder should be given a reasonable opportunity after bid opening to furnish evidence of the required certification. See Capitol Ambulance Service, Inc., B-200770, September 23, 1981, 81-2 CPD 244; 53 Comp. Gen. 51 (1973); B-156171, May 14, 1965.

However, since the record reflects that as of March 21, 1984, 3 months after award to Atlantic, U.S. Jet had not yet obtained the certification required by the IFB, corrective action is not warranted. In the circumstances of this case, it appears that a reasonable basis existed at the time of award for a determination that U.S. Jet was nonresponsible because it had not obtained the required certification. While we recognize that U.S. Jet is a small business concern and that generally a nonresponsibility determination must be referred to the Small Business Administration (SBA) it is obvious that certification is the responsibility of FAA. The SBA's granting of a COC would not be the same as FAA granting the certification. The SBA's role would be to determine the small business concern's ability to obtain the required certification in

time for performance. Since U.S. Jet had not obtained the FAA certification well after award, it is clear that referral to SBA now for a retroactive determination of U.S. Jet's ability to obtain the certification prior to performance would be useless. See International Business Investments, Inc.; Career Consultants, Inc., B-198894, February 23, 1981, 81-1 CPD 125.

Accordingly, the protest is denied.

for 
Comptroller General
of the United States